

**Escrow Agreement for
Incomplete Construction****U.S. Department of Housing
and Urban Development
Office of Housing**OMB Approval No. 0000-0000
(exp. 00/00/00)

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This Agreement is effective as of the _____ day of _____, 20____, by and among _____
(hereinafter, the Borrower), and _____
_____ (hereinafter, the Lender, acting as Depository).

The terms Lender and Borrower shall be deemed to have the meanings set forth in the HUD regulatory agreement for this transaction.

The Borrower is constructing or substantially rehabilitating a housing project or health care facility identified as HUD Project No. _____ with the proceeds of a loan (hereinafter, the Mortgage Loan) from the Lender. The Mortgage Loan is subject to disbursement under a certain Building Loan Agreement between the Borrower and Lender, dated _____, which Building Loan Agreement is by reference incorporated herein and made a part hereof.

Pursuant to a Commitment dated _____, the Secretary of Housing and Urban Development (hereinafter, HUD) has insured advances of the Mortgage Loan under Section _____ of the National Housing Act, as amended, and regulations and directives issued pursuant thereto.

The Borrower has not yet completed certain improvements (hereinafter, the Improvements) required by the Building Loan Agreement. The Improvements are listed, together with the estimated completion cost, in the attached Exhibit A. The Borrower intends to complete the Improvements.

In order to induce HUD to insure the Mortgage Loan in its maximum approved amount, and in order to induce the Lender to advance the entire approved amount prior to completion of the Improvements, the Borrower agrees to provide security for their completion, based on the estimate in Exhibit A and whatever additional amount is required by HUD.

In consideration of the premises, the parties acknowledge and agree as follows:

1. The Borrower will complete the Improvements on or before the _____ day of _____, 20__ (hereinafter, the completion date). The work will be done and completed, free of liens, in accordance with the Drawings and Specifications referred to in the Building Loan Agreement. The Borrower further agrees to pay for all labor and material necessary to complete the Improvements.

2. The Borrower acknowledges that all work performed pursuant to this Agreement is subject to the labor standards contained in Form HUD-92554M, Supplementary Conditions of the Contract for Construction, or its replacement, as

acknowledged from time to time by the original General Contractor in executing the Contractor's Prevailing Wage Certificate on the back of Form HUD-92448, Contractor's Requisition, Project Mortgages, or its replacement. The Borrower expressly agrees to be bound by the terms and provisions of the said Conditions and the Certificate. Prior to the release of any funds deposited hereunder, the Borrower will submit a Contractor's Prevailing Wage Certificate duly executed by each and every contractor performing any of the work and dated subsequent to the completion of such work.

3. The Borrower has deposited with the Lender the cash amount of \$_____, receipt of which is acknowledged by the Lender, to be held and disbursed as follows:

a. In the event the Borrower completes the Improvements in accordance with the cited requirements on or before the completion date, and there is no default under the Mortgage Loan, the Lender, upon receipt of written approval from HUD, will return the sum deposited hereunder to the Borrower, without interest.

b. In the event HUD determines that the Borrower has failed to complete the Improvements in the manner or within the time required by this Agreement, the Lender, with the approval of HUD, will have the right, in its discretion, to complete the Improvements, and to pay the cost thereof, including reasonable costs incurred by the Lender as a result of such failure, from the amount deposited under this Agreement. For this purpose, the Borrower irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, to do and perform for it, the Borrower, in its name, place and stead, all matters and things which the Lender will deem necessary and proper to be done to effectuate the completion of the Improvements, and to apply the amount deposited under this Agreement to the payment of debts, expenses, costs and charges of any kind contracted or incurred in connection therewith. This power of attorney will provide the Lender with full and sufficient authority, and the orders given by the Lender as attorney-in-fact for the Borrower will be good and sufficient vouchers for all payments made by virtue thereof. In this connection, the Lender will have full authority to enter into and upon the project and take charge thereof, together with all materials, appliances, fixtures and other improvements; and, as attorney-in-fact for the Borrower, to call upon and require contractors to complete the Improvements. To the extent that the Lender and/or its contractors complete the Improvements, such work remains subject to the labor standards referenced in Section 2 of this Agreement, and the Lender shall obtain a Contractor's Prevailing Wage Certificate duly executed by each contractor performing any of the work. In the event the Lender completes the Improvements in accordance with this Agreement, any unexpended balance of the sum deposited with the Lender will be returned to the Borrower, without interest, subject to the rights of the Lender and HUD under the Mortgage Loan documents. The Lender will not be responsible for the completion of the Improvements beyond the expenditure of the amount deposited, and if that amount is insufficient, the Lender will be under no obligation to proceed further with the Improvements or to demand additional sums from the Borrower. The power granted herein is coupled with an interest, and the Borrower acknowledges and agrees that all powers granted herein to the Lender may be assigned to HUD.

c. This Agreement is made for the benefit of the Lender and HUD, either of which shall have the right to enforce the provisions herein.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the Federal Housing Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

BORROWER

LENDER, acting as DEPOSITORY

By: _____

By: _____

Print name and title

Print name and title

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R parts 24 and 28.